



CRP.No.3123 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED :30.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3123 of 2022

1.S.Narayanan
2.Baby S.N.Ragavi ... Petitioners
D/o.S.Narayanan
being a Minor represented herein
by her father and guardian
S.Narayanan as next friend

Vs.

V.Santiny ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the entire records relating to the order dated 02.09.2022 made in O.S.SR.No.3544 of 2022 on the file of the District Munsif Court, Ambattur, set aside the same.



WEB COPY



CRP.No.3123 of 2022

For Petitioner : Mr.V.Subramani

ORDER

This revision is filed challenging the order passed by the Court below directing the plaintiffs to value the suit under Section 30 of the Tamil Nadu Court Fee Act and to pay deficit Court fee within 30 days.

2. The petitioners herein filed a suit in O.S.SR.No.3544 of 2022 seeking a decree for mandatory injunction directing the respondent or any person claiming under him to quit the suit property and deliver the vacant possession to the petitioners.

3. In the impugned order, the Court below has taken a view that though the prayer in the plaint is mentioned as mandatory injunction, in effect, it is a suit for recovery of possession and hence, it has to be valued under Section 30 of the Court Fee Act.



CRP.No.3123 of 2022

WEB COPY

4. The learned counsel for the petitioners submitted that the respondent herein is only a permissible occupier of the suit property and the revision petitioners had revoked the permission granted to him. When the permission is revoked the respondent is under an obligation to surrender the suit property to the revision petitioners. Therefore, the petitioners are entitled to maintain the prayer for mandatory injunction. He further relied on the judgment of the Hon'ble Apex Court in ***Sant Lal Jain Vs. Avtar Singh*** reported in (1985) 2 SCC 332. The Hon'ble Apex Court in para No.7 had observed as follows:

“7. In the present case it has not been shown to us that the appellant had come to the Court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another



WEB COPY



CRP.No.3123 of 2022

round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.”

5. In the above judgment, the Hon'ble Apex Court found that though the plaintiff therein, prayed a decree for mandatory injunction, his prayer is only for recovery of possession and therefore, he is entitled to get possession of the suit property. The Hon'ble Apex Court did not go into the question of payment of the deficit Court fee in that suit.

6. In the case on hand also, though the revision petitioners cleverly couched the prayer as if it is for mandatory injunction, in



CRP.No.3123 of 2022

effect, he wants the delivery of vacant possession of the suit property.

Therefore, it should be treated as a prayer for recovery of possession and consequently, it has to be valued under Section 30 of the Court Fee Act. I do not find any illegality or irregularity in the order passed by the Court below.

7. Hence, this Civil Revision Petition is dismissed. No costs. The time granted by the Court below for payment of deficit Court fee and amendment of the plaint is extended by six weeks from today.

30.09.2022

Index : Yes / No
Internet : Yes / No
dna

To

The District Munsif Court, Ambattur.

5/6



WEB COPY



CRP.No.3123 of 2022

S.SOUNTHAR, J.

dna

CRP.No.3123 of 2022

30.09.2022



WEB COPY



CRP.No.3123 of 2022